

1 Paul Strauss, #153937
 2 MINER, BARNHILL & GALLAND
 3 14 W. Erie St.
 4 Chicago, IL 60610
 5 (312) 751-1170 (telephone)
 6 (312) 751-0438 (telefax)

7 Attorneys for Plaintiffs Raul Medrano, Teresa J. Lara,
 8 Faustino Garcia, Alejandro Garcia, Olga Leyva Velarde,
 9 and Efren Ramos Fraide

10 Geoffrey F. Gega, #91980
 11 COOK BROWN, LLP
 12 1851 E. First Street, Suite 1440
 13 Santa Ana, CA 92705
 14 (714) 542-1883 (telephone)
 15 (714) 542-1009 (telefax)

16 Attorneys for Defendant
 17 D'ARRIGO BROS. CO., OF CALIFORNIA

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16 RAUL MEDRANO, TERESA J. LARA,
 17 FAUSTINO GARCIA, ALEJANDRO
 18 GARCIA, OLGA LEYVA VELARDE, and
 19 EFREN RAMOS FRAIDE, on behalf of
 20 themselves and all other persons similarly
 21 situated,

22 Plaintiffs,

23 vs.

24 D'ARRIGO BROTHERS COMPANY OF
 25 CALIFORNIA,

26 Defendant

Case No.: C-00-20826 JF (RS)

CLASS ACTION

[PROPOSED] ORDER

Date: May 29, 2007

Time: 10:00 a.m.

Ctrm: 4

Complaint filed: August 4, 2000

Based on the papers filed by the parties and their representations at the fairness hearing held on May 29, 2007 and pursuant to Fed.R.Civ.P. 23(e), the Court approves the parties' settlement, finding that the settlement is fundamentally fair, adequate, and

1 reasonable; and this Order incorporates all of the terms of the parties' *Settlement and*
2 *Release of Class Action Claims Between Plaintiffs and Defendant* submitted to this
3 Court for preliminary approval on October 3, 2006, and so approved on October 10,
4 2006.

5
6 Dismissal and Release.

7 Pursuant to the terms of the settlement agreement, this case is dismissed with
8 prejudice and all class members are barred from prosecuting against D'Arrigo Bros., its
9 related entities and their officers, directors, or employees, any individual or class claims
10 which are or could have been asserted in this action, including without limitation any
11 claims arising out of the acts, facts, occurrences, or omissions set forth in plaintiffs'
12 original complaint, plaintiffs' amended class action complaint, and the plaintiffs'
13 second amended class action complaint deemed filed by the Court by reason of its
14 Order dated August 27, 2004. The Court retains jurisdiction of the case to construe,
15 interpret, and enforce the provisions of the settlement agreement for a period of one
16 year following payment of the amounts called for by the settlement.

17 Adequacy of the Settlement.

18 The factors the Court is to consider in reviewing the settlement are described in
19 *In re Mego Financial Corporation Securities Litigation*, 213 F.3d 454, 458 (9th Cir.
20 2000):

21 "Assessing a settlement proposal requires a district court to
22 balance a number of factors: the strength of the plaintiffs' case;
23 the risk, expense, complexity, and likely duration of further
24 litigation; the risk of maintaining a class action status throughout
25 the trial; the amount offered in settlement; the extent of
26 discovery completed and the stage of the proceedings; the
27 experience and views of counsel;...and the reaction of the class
28 members to the proposed settlement." *Hanlon [v. Chrysler Corp.]*, 150 F.3d [1011 (1998)] at 1026 (citations omitted)... In
addition, the settlement may not be the product of collusion
among the negotiating parties. *Class Plaintiffs [v. City of Seattle]*, 955 F.2d [9th Cir. 1998)] at 1290.

1 Several of these factors can be addressed in short order. Plaintiffs had a strong
2 case on at least some aspects of liability -- the Court granted partial summary judgment
3 to the plaintiffs on liability. There was no significant risk that the case would not
4 continue as a class action. Settlement was reached after discovery was complete and
5 the parties were prepared for trial and after the Court's summary judgment decision.
6 Plaintiffs' counsel is experienced in cases of this kind and strongly recommends the
7 settlement. There are no objections to the settlement. Settlement negotiations were
8 supervised by Magistrate Judge Brazil and there is no evidence of collusion.

9 The remaining considerations are the amount of the settlement, potential
10 damages, risks for plaintiffs in continuing to litigate, and the amount of time it would
11 take to resolve this case if it was not settled.

12 The settlement provides for a \$3.5 million settlement fund for plaintiffs, class
13 members, and to pay attorneys' fees and expenses. The settlement fund also has to be
14 reduced to pay the settlement administrator's charges, to the extent they are more than
15 \$75,000.00 that defendant will pay under the settlement, separate and apart from the
16 \$3.5 million settlement fund. The settlement administrator estimates that its final
17 charges will be \$18,952.00 more than the \$75,000.00 that defendant is required to pay.
18 Plaintiffs' attorneys are asking the Court to approve \$1,232,000.00 for fees and
19 expenses -- which is below their lodestar, as described below. Subtracting the
20 settlement administrator's charges and the fees and expenses from the \$3.5 million
21 settlement fund, plaintiffs and the class will receive \$2,249,048.00 from the settlement.
22 (That includes \$30,000.00 held in reserve to pay late claims.)

23 As described by plaintiffs' counsel, as they entered into settlement negotiations,
24 they had three areas of potential recovery: damages for lost wages, waiting-time
25 penalties under California Labor Code §203, and penalties under the AWP, 29 U.S.C.
26 § 1854(c). In each area there is a significant range as to what plaintiffs and the class
27 might have received. And in each area they had to discount for the likelihood that class
28 members would not be located and would not file claims.

1 *Lost wages.* Applying the provisions of IWC Wage Order 14-80, the Court held
2 in its summary judgment decision that D'Arrigo is liable because it failed to pay the
3 minimum wage. That is, when one includes mandatory waiting and travel time as hours
4 worked, and divides total pay for a week by total hours worked, the average amount per
5 hour was on some occasions less than the minimum wage. To recover individually, the
6 Court held, plaintiffs and class members must show that they received less than the
7 minimum wage required by Wage Order 14-80, looking at their total earnings over the
8 course of the week and comparing that with what they would have earned if they were
9 paid the minimum wage for all hours worked, including mandatory waiting and travel
10 time. The Court also held D'Arrigo liable to the extent it failed to pay required
11 overtime wages, when travel time is taken into account.

12 In its summary judgment decision, the Court rejected plaintiffs' argument that
13 class members should be compensated for their travel time, whether or not their total
14 earnings for the week were above or below the minimum wage. The Court also did not
15 rule on whether plaintiffs and class members in fact were not paid for their travel time,
16 leaving open D'Arrigo's position that class members' piece-rate earnings compensated
17 workers both for their time in the fields and their time traveling.

18 The Court's ruling that damages are only owed when wages dropped below the
19 minimum wage was a crucial turning point in this case. According to plaintiffs'
20 counsel, applying the Court's ruling means that the total lost wages for failure to pay
21 the minimum wage and overtime is \$1,178,645.00. And that amount is calculated using
22 D'Arrigo's rules on when it would pay overtime. If the Court held that damages for
23 lost overtime should be calculated using only what IWC Wage Order 14-80 requires,
24 total lost wages and overtime would be only \$250,423.00.

25 These are the total possible damages for lost earnings if every class member was
26 located and filed a claim. That is extremely unlikely. Indeed, in this case, of the 3,074
27 class members, 974 have filed claims -- only a little more than 30% of the class.
28

1 Assuming that the case proceeded to judgment and 30% of the class filed
2 claims, the damages would have been dramatically reduced. Using the Court's ruling
3 on liability and D'Arrigo's overtime rules, the class would have recovered \$353,593.50.
4 If the Court's ruling and the overtime rules in the Wage Order were applied, the class
5 would have recovered only \$75,126.90 for lost wages.

6 *Waiting-time penalties.* California Labor Code § 203 provides for waiting-time
7 penalties, wages when an employee is discharged without being paid wages that he is
8 owed. A day's wage is owed for each day the employee is not properly paid, for up to a
9 maximum of 30 days.

10 In theory, plaintiffs could argue in settlement negotiations that they had a
11 substantial claim for waiting-time penalties. But there were significant problems and
12 risks for plaintiffs in pursuing the claim for waiting-time penalties.

13 First, defendant had a good-faith defense for waiting-time penalties for anyone
14 discharged prior to the California Supreme Court's decision in *Morillion v. Royal*
15 *Packing Co.*, 22 Cal. 4th 575 (2000), issued in March, 2004. Until the Supreme Court's
16 decision in *Morillion*, defendant argued, it could rely in good faith on the trial court and
17 appellate court's decisions in *Morillion*, holding that an employer like D'Arrigo did not
18 have to pay wages for mandatory travel time. In this Court's initial decision on
19 summary judgment, the Court accepted D'Arrigo's argument, writing that "...the
20 defendant should not be penalized if the law is unclear and the defendant did not
21 withhold payment in bad faith. It is undisputed in this case that the law was unclear
22 until *Morillion*, which was decided in 2000." (Order granting plaintiffs' motion for
23 partial summary judgment, 3/16/04, at 10.) The Court ultimately removed all
24 discussion of waiting-time penalties from its amended order on summary judgment
25 (9/22/04), but the discussion in the March 16, 2004 order certainly was not encouraging
26 for plaintiffs on this issue.

1 Second, defendant had a strong argument that waiting-time penalties were not
2 owed to anyone discharged after August 4, 2000, when plaintiffs filed their lawsuit.
3 Labor Code § 203 provides:

4 If an employer willfully fails to pay, without abatement or reduction, in
5 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
6 employee who is discharged or who quits, the wages of the employee shall
7 continue as a penalty from the due date thereof at the same rate until paid
or until an action therefore is commenced; but the wages shall not
continue for more than 30 days.

8 (Emphasis added.) D'Arrigo argued that by filing the action on August 4, 2000,
9 plaintiffs cut off the possibility of waiting-time penalties after that date. The Court
10 initially agreed with that argument, writing in its first summary judgment decision that
11 waiting-time penalties might be available to any employee who was discharged "after
12 the *Morillion* decision and before this lawsuit was filed." (Order, 3/16/04, at 11.) The
13 Court removed that discussion in the amended order issued on September 22, 2004 and
14 plaintiffs do not agree that filing the lawsuit cut off the possibility of waiting-time
15 penalties for employees who were discharged after the lawsuit was filed. But that is
16 obviously an issue on which plaintiffs could lose.

17 Finally, D'Arrigo had a strong argument that when employees were subject to
18 an end-of-season layoff, they were not "discharged" as that term is used in Labor
19 Code § 203. In its initial summary judgment decision that is what the Court held:

20 [S]easonal employees such as Plaintiffs are not "discharged" within the
21 meaning of the statute when they are "laid off" during the off-season with
22 the expectation that they will return to work at the onset of the subsequent
23 season. Plaintiffs generally returned the following season, keeping their
seniority rights.... Statutory penalties generally are unwarranted.

24 (Order, 3/16/04 at 10.) Plaintiffs disagree with that conclusion -- they argue that they
25 could show that under the Labor Code an end-of-season layoff is a "discharge" -- and
26 the Court in its amended order of September 22, 2004 did not include this discussion.
27 But again it's clear that this is an issue on which plaintiffs might lose.
28

1 Plaintiffs' counsel represents that if plaintiffs lost on the first issue and either the
2 second or the third, it would eliminate almost all of the claims for waiting-time
3 penalties. Plaintiffs and the class would not have any claim for waiting-time penalties
4 for discharges prior to March, 2000. And they would not have any claim for waiting-
5 time penalties from seasonal layoffs, eliminating the vast majority of the claims for
6 waiting-time penalties. Indeed, if plaintiffs lost on the first and second issues, only
7 employees who worked after March, 2000 and were permanently discharged before
8 August 4, 2000, would have a claim for waiting-time penalties. And D'Arrigo would
9 only have to pay waiting-time penalties to the subset of those employees who could be
10 located and filed claims.

11 *AWPA* penalties. *AWPA* provides for statutory penalties for each violation, up
12 to \$500.00 per person, with a maximum penalty of \$500,000.00 in class actions.
13 29 U.S.C. § 1854(c). The Court found two violations of *AWPA*: defendant failed to
14 pay all wages when due and failed to properly record all hours worked. *See* 29 U.S.C.
15 § 1832(a) and 1831(c). The amount of the penalty is left to the Court's discretion.

16 In theory, the maximum amount plaintiffs and the class could have received for
17 the *AWPA* violations is \$1,000,000.00-- two violations with penalties of \$500,000.00
18 for each of them. But the Court could have ruled that plaintiffs and class members
19 should not receive the maximum penalties. Plaintiffs' counsel points out that the Court
20 could have held that significant penalties should not be awarded because D'Arrigo
21 relied in good faith on the lower court decisions in *Morillion* and quickly changed its
22 policy after the Supreme Court's decision in *Morillion*; the Court could have concluded
23 that class members who received waiting-time penalties should not also get penalties
24 under *AWPA*; and the Court could have decided that D'Arrigo's two violations stem
25 from the same source of conduct, so the class should receive *AWPA* penalties as if
26 there was one violation, not two.

27 It's impossible to say now what would have happened if the case did not settle.
28 But given the complexity of the issues and the risks that plaintiffs faced, recovering

1 \$2,249,048.00, is certainly fair, adequate, and reasonable for purposes of settlement. If
2 the settlement is not approved, there is no guarantee that plaintiffs and the class can do
3 better. They might do much worse.

4 The last factor the Court is required to consider is how long it would take to
5 resolve the case if the settlement is not approved. It would take very long time. If the
6 settlement were not approved and litigation was resumed, plaintiffs' counsel reports that
7 plaintiffs would start by asking the Court to reconsider its ruling on damages in light of
8 *Armenta v. Osmose*, 135 Cal.App.4th 314 (2nd Dist. 2005). If the Court followed
9 *Armenta* and held that plaintiffs and class members have to be paid for all travel time,
10 and not just to the extent their earnings fell below the minimum wage, the Court would
11 have to determine -- on a motion for summary judgment or after a trial -- whether the
12 piece rate paid to plaintiffs and class members was intended to compensate them for
13 their travel time as well as their time working in the fields. The Court would have to
14 resolve the legal issues with respect to waiting-time penalties, discussed above. There
15 would have to be a short trial or some other type of proceeding to determine if members
16 of the hoeing and thinning crews were required to ride the bus. (D'Arrigo conceded
17 that point for the purposes of this settlement only.) And then there would be contested
18 damages proceedings -- D'Arrigo would have the opportunity to contest each class
19 member's claim. After all of that work plaintiffs' counsel believes it is very likely that
20 one side or the other would appeal -- whichever side lost on the application of *Armenta*
21 *v. Osmose* would probably appeal the Court's decision, and whichever side lost on the
22 crucial decisions about waiting-time penalties would probably appeal those decisions as
23 well. It could easily take another two years or more before the appeals were completed.
24 And if the judgment of the Court was reversed on appeal there would have to be new
25 damages proceedings on remand.

26 In sum, all of the relevant factors favor approving the settlement. It's a very
27 good result for plaintiffs and the class given the potential damages and risks of
28 proceeding to final judgment. It was negotiated after discovery was complete by

1 competent counsel at arm's length under the supervision of a Magistrate Judge. There
2 are no objections to the settlement. If the settlement is not approved, plaintiffs and the
3 class will face years of additional litigation.

4 Incentive awards of \$7,500.00 for each of the named plaintiffs.

5 Plaintiffs request a special award of \$7,500.00 to each of the six named
6 plaintiffs to be paid from the \$3.5 million settlement fund. The Court approves that
7 request.

8 The named plaintiffs in a class action confer a benefit on the class by taking the
9 risks involved in filing and pursuing a case for the class, aiding counsel in prosecuting
10 the case, responding to discovery, and attending mandatory settlement conferences. To
11 compensate named plaintiffs for their time, effort, and the risk they took for the benefit
12 of the class, the Court has discretion to approve an "incentive award" for them, to be
13 paid out of the fund recovered for plaintiffs and the class.

14 Plaintiffs and plaintiffs' counsel represent that plaintiffs believed they might be
15 fired because they filed suit against their employer. In addition, according to plaintiffs'
16 counsel, the plaintiffs gave a substantial amount of assistance and time to plaintiffs'
17 counsel throughout the case, explaining how D'Arrigo's travel rules worked, what the
18 rules were for each crew, suggesting witnesses who might testify, and discussing the
19 position class members were likely to take with respect to settlement. The named
20 plaintiffs appeared for full-day depositions, answered interrogatories, requests to
21 produce, first supplemental interrogatories, and second supplemental interrogatories.
22 They appeared for each of the settlement conferences with Magistrate Judge Brazil and
23 two separate days of settlement negotiations directly with D'Arrigo. They lost pay for
24 each of the days they attended settlement meetings as well as the days spent at their
25 depositions.

26 Without the named plaintiffs' willingness to take the risk to file and pursue this
27 case and without their work during the course of the case, there would be no class
28 recovery. The Court therefore approves the payment of \$7,500.00 to each of the named

1 plaintiffs from the \$3.5 million settlement fund. In approving these payments, the
2 Court makes no finding that there was a threat of retaliation or that defendant retaliated
3 in any way against the plaintiffs based on their participation in this case.

4
5 Attorneys' & fees and expenses.

6 Plaintiffs seek Court approval for payment of \$1,232,000.00 in attorneys' fees
7 and expenses to be paid from the settlement fund and seeks approval of the provision of
8 the settlement for payment of a separate \$30,000.00 for fees incurred in negotiating the
9 final terms of the settlement, guiding the settlement through the Court, and monitoring
10 the administration and distribution of the settlement fund.

11 Plaintiffs' counsel have submitted detailed time records and records of their
12 expenses. They have also provided affidavits to establish that their rates are reasonable
13 market rates. Based on these records and affidavits, their total lodestar is \$1,725,915.59
14 in fees and \$228,115.24 in expenses. (That amount does not include fees previously
15 paid by D'Arrigo pursuant to earlier orders by the Court.) Thus, plaintiffs' attorneys
16 ask the Court to approve fees and expenses that are \$722,030.83 below their

17 ///

18 ///

19 ///

1 lodestar. No class member has objected to payment of the requested fees and expenses.
2 The Court finds the amounts requested by plaintiffs' counsel to be fair, adequate, and
3 reasonable and approves the payment of fees and expenses as requested.

4
5 Approved as to form:

MINER, BARNHILL & GALLAND

6
7 Dated: _____

By: /s/ Paul Strauss

8 Paul Strauss
9 Attorneys for Plaintiffs

10 Approved as to form:

COOK BROWN, LLP

11
12 Dated: _____

By: /s/ Geoffrey F. Gega

13 Geoffrey F. Gega
14 Attorneys for Defendant

15 IT IS SO ORDERED.

16
17 Dated: 6/6/07

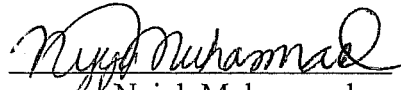


18 The Honorable Jeremy Fogel
19 U.S. District Court Judge

20 ///

PROOF OF SERVICE

Nujah Muhammad certifies that she caused a copy of the foregoing [Proposed] Order to be served upon all counsel of record, by this Court's electronic-filing system, this fifth day of June, 2007.


Nujah Muhammad